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4 UNITED STATES DISTRICT COURT  
5 DISTRICT OF NEVADA

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7 BANK OF AMERICA, N.A.,

8 Plaintiff(s),

9 v.

10 SAMUEL R. BAILEY, et al.,

11 Defendant(s).

Case No. 2:14-CV-885 JCM (GWF)

ORDER

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13 Presently before the court is plaintiff Bank of America, N.A.'s ("BOA") motion to  
14 bifurcate trial. (ECF No. 77). Defendant Samuel R. Bailey filed a response (ECF No. 80), to  
15 which plaintiff replied (ECF No. 84).

16 **I. Facts**

17 Plaintiff initiated the present action, requesting declaratory relief and quiet title as to its  
18 alleged first-position security interest in the real property at 4850 Impressario Court, Las Vegas,  
19 Nevada (the "property"). (ECF No. 1). Neither party has requested a jury.

20 Bailey then filed the following counterclaims against BOA: (1) offset; (2) unjust  
21 enrichment; (3) slander of title; and (4) attorneys' fees as special damages. (ECF No. 39).

22 According to BOA, dismissed co-defendant Peter Aguilar owned the property, refinancing  
23 it with a roughly \$400,000.00 loan from Countrywide Bank, FSB ("Countrywide") on December  
24 17, 2008. (ECF No. 68). This transaction was secured by a deed of trust for Countrywide that  
25 was recorded on the same day. *Id.*

26 On January 23, 2010, Aguilar then refinanced the property by means of a \$396,459.00 loan  
27 from BOA, which satisfied the outstanding Countrywide loan. *Id.* As a result, a February 2, 2010,  
28 substitution of trustee and reconveyance was recorded. *Id.*

1 Plaintiff asserts that a first deed of trust on the property secured the BOA loan. *Id.*  
2 Importantly, plaintiff indicates that the deed of trust was executed by Aguilar on January 23, 2010,  
3 but it was not recorded until October 21, 2011. *Id.*

4 In the meantime, Aguilar and Bailey allegedly acted as principals of Silver State Steel  
5 Group, Inc. in the course of that entity's acquisition of a Small Business Administration ("SBA")  
6 loan from Meadows Bank ("Meadows"). (ECF No. 70).

7 Plaintiff asserts that "Aguilar and Bailey additionally each personally guaranteed the SBA  
8 Loan. As additional collateral for the SBA Loan, Aguilar granted Meadows a second-position  
9 Deed of Trust . . . on the Property, which was recorded on July 1, 2010." (ECF No. 68 at 4)  
10 (citations omitted). Plaintiff alleges that Bailey and Meadows had actual knowledge of the BOA  
11 loan and unrecorded deed of trust. *Id.*

12 Next, Aguilar received a loan from Franklin America Mortgage Company ("Franklin").  
13 (*Id.*). That "[l]oan was secured by a First Deed of Trust recorded against the Property on December  
14 1, 2010." *Id.* at 5. This loan was "used to fully satisfy the outstanding balance owed on the BOA  
15 Deed." *Id.*

16 On December 13, 2012, Franklin assigned its deed of trust to BOA. *Id.* Thereafter, "Bailey  
17 . . . acquired an assignment of Meadows' right, title, and interest on June 6, 2013." (ECF No. 71  
18 at 6).

19 On September 3, 2013, defendant Bailey recorded a notice of default and election to sell.  
20 *Id.* On May 14, 2014, defendant recorded a notice of sale. *Id.* Plaintiff initiated the instant action  
21 on June 6, 2014, requesting a declaratory judgment that its security interest in the property,  
22 stemming from the Franklin deed of trust, "is superior to and holds priority over the Meadows  
23 Deed of Trust." (ECF No. 1 at 4). Finally, "Bailey acquired a Trustee's Sale Deed to the Property  
24 on September 9, 2014." (ECF No. 70 at 5).

25 Plaintiff and defendant filed cross-motions for summary judgment on their claims. (ECF  
26 Nos. 68, 70). On June 22, 2017, this court granted in part and denied in part plaintiff's motion,  
27 and denied defendant's motion. (ECF No. 76). The court held that a dispute of fact exists  
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1 concerning whether Franklin's expectation of subrogation at the time of discharge of the original  
2 BOA deed of trust was reasonable. (ECF No. 76 at 7–8).

## 3 **II. Legal Standard**

4 Federal Rule of Civil Procedure 42(b) grants courts the authority to “order a separate trial  
5 of one or more separate issues, claims, crossclaims, counterclaims, or third-party claims.” Courts  
6 may order separate trials to achieve “convenience, to avoid prejudice, or to expedite and  
7 economize” the proceedings. *Id.* Decisions regarding bifurcation are left to the trial court's  
8 discretion. *Hirst v. Gertzen*, 676 F.2d 1252, 1261 (9th Cir. 1982).

## 9 **III. Discussion**

10 Plaintiff's motion to bifurcate requests that the court to conduct a trial in this case in two  
11 separate phases. The first phase would consider plaintiff's allegation of equitable subrogation and  
12 plaintiff's claim for quiet title. (ECF No. 77). The second phase would consider defendant's  
13 claims for offset and unjust enrichment (and any resulting relief). *Id.* Plaintiff stresses economic  
14 and practical considerations in support of its motion. *Id.*

15 Defendant objects to bifurcation. (ECF No. 80). Defendant asserts that plaintiff has  
16 attempted to foreclose on the property during the pendency of the action. *Id.* at 5. Defendant  
17 believes that if plaintiff obtains a favorable ruling in the first phase of trial, plaintiff will foreclose  
18 on the property and leave defendant without adequate legal or equitable remedies. *Id.* Defendant  
19 also argues that he is entitled to assert his equitable defenses and counterclaims prior to a  
20 determination of BOA's claims.<sup>1</sup> *Id.* Defendant suggests that if the court is inclined to bifurcate  
21 the trial, that the first phase of the trial should “simply . . . determine the issue identified in its June  
22 Order of whether Franklin's belief [that it obtained a security interest with the same priority as the  
23 interest being discharged] was reasonable.” *Id.* at 6.

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27 <sup>1</sup> Defendant's response suggests that its counterclaims would entitle it to some sort of offset  
28 against BOA's interest in the property. (ECF No. 80). As plaintiff notes in its reply, if plaintiff  
prevails on its quiet title claim then defendant's counterclaims would not affect the priority status  
of plaintiff's lien or the amount of such lien. They would simply entitle defendant to a money  
judgment. (ECF No. 84).

1 The court will deny the motion to bifurcate. The trial of both claims in the same proceeding  
2 is the most efficient and appropriate way to resolve the disputed claims. The movant has not shown  
3 that trial of the case in two separate proceedings is appropriate.

4 **IV. Conclusion**

5 Accordingly,

6 IT IS HEREBY ORDERED, ADJUDGED, and DECREED that plaintiff's motion to  
7 bifurcate trial (ECF No. 77) be, and the same hereby is, DENIED.

8 DATE September 21, 2017.

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UNITED STATES DISTRICT JUDGE